

REMARKS

This application has been carefully reviewed in light of the Office Action dated March 11, 2003 (Paper No. 14). Claims 1 to 4, 8 to 15, and 19 to 45 are in the application, with Claims 11, 22, 23 and 25 to 45 being withdrawn from consideration. Claims 1, 12, 26 and 36 are the independent claims. Reconsideration and further examination are respectfully requested.

Claims 7, 9 and 18 to 20 were rejected under 35 U.S.C. § 112, first paragraph, for alleged failure of enablement. In response, without conceding the correctness of the rejection and solely to advance prosecution, Claims 7 and 18 have been cancelled without prejudice or disclaimer of subject matter, and the dependencies of Claims 9, 19 and 20 have been rewritten. Accordingly, withdrawal of the Section 112, first paragraph, rejection is respectfully requested.

Claim 46 was rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,172,902 (Wegrowe); and Claims 1 to 10, 12 to 21 and 24 were rejected under 35 U.S.C. § 103(a) over JP 11-200090 (JP '090) in view of Wegrowe. In response, without conceding the correctness of the rejections and solely to advance prosecution, independent Claim 1 has been rewritten to contain the subject matter of Claim 6, with Claims 5 and 6 being cancelled, and independent Claim 12 has been rewritten to contain the subject matter of Claim 17, with Claims 16, 17 and 46 being cancelled. This should be viewed as a traversal of the rejection of Claims 6 and 17. Additionally, as mentioned above, Claims 7 and 18 have been cancelled. Reconsideration and withdrawal of the rejections are respectfully requested.

The present invention, as recited by independent Claim 1, concerns a structure having pores which includes a substrate; a plurality of electroconductive layers formed on a surface of the substrate; a layer containing aluminum oxide covering the plurality of electroconductive layers and the surface of the substrate where no electroconductive layer is formed; and a plurality of pores formed in the layer containing aluminum oxide. The plurality of pores is disposed above the plurality of electroconductive layers and the surface of the substrate where no electroconductive layer is formed, with a part of the layer containing aluminum oxide provided under the plurality of pores. The layer containing aluminum oxide provided between the bottom of the pores disposed above the electroconductive layer and the electroconductive layer includes a material forming the electroconductive layer. A material different from aluminum oxide is filled in at least one pore disposed above the electroconductive layer.

The present invention, as recited by independent Claim 12, concerns a structure having pores which includes a substrate; a electroconductive layer formed on a surface of the substrate, with the electroconductive layer being patterned; a layer containing aluminum oxide covering the electroconductive layer and a surface of the substrate where no electroconductive layer is formed; and a plurality of pores formed in the layer containing aluminum oxide. The plurality of pores is disposed above the electroconductive layer and the surface of the substrate where no electroconductive layer is formed. An electroconductive path is provided between the electroconductive layer and the bottom of the pores disposed above the electroconductive layer. A part of the layer containing aluminum oxide is provided under the plurality of pores. The layer containing aluminum oxide provided between the electroconductive layer and the bottom of the pores disposed

above the electroconductive layer includes a material forming the electroconductive layer. A material different from aluminum oxide is filled in at least one pore disposed above the electroconductive layer.

According to one feature of the invention recited by the claims under consideration, the plurality of pores is disposed above the electroconductive layer and the surface of the substrate where no electroconductive layer is formed.

The Office Action concedes that JP '090 fails to teach or suggest this feature. Yet, the Office Action asserts that it would have been obvious to modify JP '090 with the teaching of Wegrove to include this feature, with the stated motivation being "in order to form individual functional components in an integrated circuit."

However, this stated motivation is found only in Applicants' own specification. Viewed in its proper light, the obviousness rejection advanced in the Office Action is an impermissible hindsight rationalization of a result now deemed desirable but nowhere hinted at in the applied art. The prior art must, without the benefit of Applicants' specification, provide a motivation for making the necessary changes in a reference. See MPEP § 2143.01.

If the Office Action is relying on a "common knowledge" or "well-known art" rationale in asserting that it would have been obvious to modify JP '090, Applicants respectfully request a citation in support of the position taken in the Office Action. See MPEP § 2144.03.

In view of the foregoing, Applicants conclude that the applied references do not teach or suggest the claimed invention, either singly or in the combination proposed by

the Office Action. It is therefore respectfully requested that the Section 102 and 103 rejections be withdrawn.

With regard to non-elected Claims 11, 22, 23 and 25, it is believed that at least Claims 1 and 12 are generic claims. Accordingly, upon the allowance of Claims 1 and 12, Applicants submit that they are entitled to the allowance of all claims directed to species encompassed by those claims. See MPEP § 806.04(d).

With regard to non-elected method Claims 26 to 46, these claims have been amended to contain all of the features of elected product claims. Accordingly, Applicants respectfully request re-joinder of these claims pursuant to MPEP § 821.04.

No other matters being raised, it is believed that the entire application is fully in condition for allowance, and such action is courteously solicited.

Applicants' undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



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